Supreme Court, U.S.
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No. 93-1242

# In the Supreme Court of the United States

OCTOBER TERM, 1993

MICHAEL AUSTIN, PETITIONER

*v.*

CHARLES E. HEALY, UNITED STATES MARSHAL, EASTERN DISTRICT OF NEW YORK

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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## QUESTION PRESENTED

Whether a district court local rule authorizing magistrate judges to conduct extradition proceedings violates 18 U.S.C. 3184 or Article III of the Constitution.

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### OPINIONS BELOW

The opinion of the court of appeals affirming the denial of petitioner's application for a writ of habeas corpus, Pet. App. 1a-14a, is reported at 5 F.3d 598. The opinion of the district court denying petitioner's application for a writ of habeas corpus, Pet. App. 15a-26a, and the order of the magistrate judge certifying that petitioner is subject to extradition, Pet. App. 29a-31a, are unreported.

### JURISDICTION

The judgment of the court of appeals was filed on September 21, 1993. A petition for rehearing was denied on November 5, 1993. Pet. App. 27a-28a. The petition for a writ of certiorari was filed on February 1, 1994. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

This case involves an extradition request for petitioner presented by the United Kingdom to the United States. A magistrate judge in the United States District Court for the Eastern District of New York certified that petitioner was subject to extradition under the applicable treaty. Pet. App. 29a-31a. Subsequently, the district court denied petitioner's application for a writ of habeas corpus, Pet. App. 15a-26a, and the court of appeals affirmed, Pet. App. 1a-14a.

1. The evidence presented at the extradition hearing established probable cause to believe that petitioner arranged the murder of David George Wilson, a British accountant, in Lancashire, England, on March 5, 1992, to prevent Wilson from implicating petitioner in a failed fraudulent scheme. Posing as a Mexican Army colonel, petitioner engaged Wilson to find investors for a proposal to import Mexican cigarettes into Europe. Wilson found investors for the cigarettes, and the investors opened letters of credit in petitioner's favor when the ships that were supposedly carrying the cigarettes left for Europe. In fact, the cigarettes did not exist; petitioner planned to scuttle the ships at sea and to abscond with the investors' money. Pet. App. 2a-3a.

When the ships that were supposed to be carrying the cigarettes did not arrive, Wilson investigated and learned of the scheme. A short time later, British authorities, alerted to the scheme, arrested Wilson. After agreeing to cooperate with authorities, Wilson was released. Wilson then informed petitioner that he was cooperating with the police. By telephone and telefax from his office in New York City, petitioner arranged surveil-

lance of Wilson in the days preceding the murder. Petitioner also told business associates that he intended to have Wilson murdered because Wilson owed him money and was cooperating with the authorities. Pet. App. 3a. On March 5, 1992, two unknown men broke into Wilson's home, bound and gagged his family, and shot Wilson in the head. Gov't C.A. Br. 8.

2. On April 1, 1992, the Magistrate's Court at Lancashire issued a warrant for petitioner's arrest on the charge of conspiracy to murder Wilson. By diplomatic note, the United Kingdom then requested petitioner's provisional arrest, and on April 3, 1992, a magistrate judge in the Eastern District of New York issued a provisional arrest warrant. Petitioner was arrested on July 15, 1992. On August 27, 1992, the Lancashire Magistrate's Court issued a second arrest warrant, charging petitioner with the substantive crime of murder. In September 1992, the United Kingdom formally requested petitioner's extradition. Pet. App. 3a-4a; Gov't C.A. Br. 3-4.

Pursuant to a local rule in the Eastern District of New York, the clerk of the court assigned petitioner's extradition to a magistrate judge. See Rule 9 of the Rules for Proceedings Before Magistrates, United States District Courts for the Southern and Eastern Districts of New York.[1] Petitioner did not object to the assignment of the magistrate or request that a district judge preside over his extradition hearing. On January 29, 1993, the magistrate judge found probable cause to believe that petitioner committed the crimes charged and

[1] Rule 9 provides as follows: "Pursuant to 18 USC Sec 3184 magistrates are empowered to issue warrants for the apprehension of persons and conduct hearings and consider the evidence in the extradition proceedings referred to therein."

certified petitioner's extraditability to the United Kingdom. Pet. App. 3a-4a, 29a-31a.

Petitioner then sought a writ of habeas corpus to block his extradition. The district court denied the petition. The court rejected petitioner's contentions that the magistrate judge erred in considering hearsay evidence; that the evidence was insufficient to support the magistrate judge's probable cause determination; and that the magistrate judge should have allowed petitioner further discovery to obtain evidence to oppose his extradition. Pet. App. 15a-26a. Petitioner did not challenge the referral of the extradition proceeding to a magistrate judge. Pet. App. 4a.

3. The court of appeals affirmed. Pet. App. 1a-14a. Initially, the court held that Rule 9's general authorization of magistrate judges to conduct extradition hearings did not violate 18 U.S.C. 3184, which empowers magistrate judges to conduct extradition hearings when "authorized so to do by a court of the United States." The court found it "incomprehensible that if a statute authorizes a court to delegate responsibility, it cannot do so as a corporate body (by rule) and must act only through individual judges on a case-by-case basis." Pet. App. 7a. The court likewise found no merit in petitioner's claim that a provision of the Federal Magistrates Act, 28 U.S.C. 636(b)(1)(B), required an individual delegation of authority to a magistrate judge. According to the court, that provision, which allows a "judge" to designate a magistrate "to conduct hearings," did not alter the longstanding practice of allowing United States Commissioners, the predecessors of magistrate judges, to conduct extradition hearings without being specially appointed in particular cases. Pet. App. 7a-8a.

The court of appeals also concluded that Article III of the Constitution does not require extradition hearings

to be conducted by Article III judges. Pet. App. 8a-13a. First, the court held that a rule authorizing the assignment of a magistrate judge to conduct an extradition hearing does not compromise the institutional independence of the Article III judiciary. The court reasoned that "the function performed by the judicial officer in certifying extraditability has not historically been considered an exercise of the 'judicial power of the United States'" (Pet. App. 10a); that extradition proceedings are akin to preliminary examinations routinely conducted by magistrate judges to determine whether probable cause exists to detain an arrested defendant (Pet. App. 10a-11a); and that the integrity of the judicial branch is adequately safeguarded by the authority of Article III judges to appoint and remove magistrate judges (Pet. App. 12a). The court also noted that Rule 9 was promulgated by Article III judges. Pet. App. 12a.

Second, the court of appeals held that the rule authorizing the assignment of magistrate judges to conduct extradition proceedings did not violate petitioner's personal rights under Article III. Although the court acknowledged the importance of an unbiased extradition hearing before an independent tribunal, it held that Article III does not "demand further safeguards to individual liberty than those already chosen by Congress and the judges of the Eastern District." Pet. App. 12a-13a.[2]

## ARGUMENT

Petitioner contends (Pet. 9-27) that the local rule in the Eastern District of New York that authorizes the referral of an extradition proceeding to a magistrate

[2] The court of appeals also upheld the district court's conclusion that the evidence was sufficient to establish probable cause to believe that petitioner committed the crimes alleged in the extradition request. Pet. App. 13a-14a.

judge without the specific authorization of an Article III judge violates the statutes governing the powers of magistrate judges and Article III of the Constitution. That claim is without merit and does not warrant further review.

1. The procedure for international extradition has remained unchanged for approximately 140 years. Extradition from the United States occurs only pursuant to a treaty between the requesting nation and the United States. See 18 U.S.C. 3181. Section 3184, whose predecessor was enacted in 1848 to implement extradition treaties with Great Britain and France, see *In re Kaine*, 55 U.S. (14 How.) 103, 109 (1853), sets out the procedures that govern the extradition process.[3] Under that statute, an international extradition hearing is initiated by the filing of a sworn complaint charging the commission of a crime in the requesting country. Upon the filing of the complaint and the issuance of a warrant for the arrest of the individual whose extradition is sought, Section 3184 allows "any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States," to hold a hearing. The statute provides that "[i]f, on such hearing, [the judicial officer] deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he

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[3] Except for grammatical changes, the pertinent language of Section 3184 is virtually identical to the language of the original law enacted in 1848. See Act of Aug. 12, 1848, ch. 167, 9 Stat. 302. Section 1 of the original Act became Section 5270 of the Revised Statutes in 1876. Section 5270 in turn became 18 U.S.C. 651 in the 1940 edition of Title 18 of the United States Code, and 18 U.S.C. 3184 in the 1948 codification. In 1968, the "technical amendments" in the Federal Magistrates Act changed the word "commissioner" to "magistrate" in Section 3184. See Federal Magistrates Act, Pub. L. No. 90-578, § 301(a)(3), 82 Stat. 1115.

shall certify the same * * * to the Secretary of State." Section 3184 does not authorize the judicial officer to order extradition; instead, pursuant to 18 U.S.C. 3186, the Secretary of State makes the ultimate decision.

After the Secretary of State orders extradition, the extradited person may challenge the Secretary's order by seeking a writ of habeas corpus. In that proceeding, the petitioner may challenge the jurisdiction of the extradition court, the validity and scope of the treaty with the requesting country, and the sufficiency of the evidence supporting the finding of extraditability. See *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925); *Caplan* v. *Vokes*, 649 F.2d 1336, 1340 (9th Cir. 1981).

Contrary to petitioner's contention (Pet. 25), Section 3184 does not require an Article III judge specifically to authorize a magistrate judge to conduct an extradition proceeding in every case. Instead, the statute provides simply that an extradition proceeding may be conducted by a "any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States." In Rule 9, the United States District Court for the Eastern District of New York, which is indisputably a "court of the United States," has authorized magistrate judges to conduct extradition proceedings. Thus, Rule 9 falls within the plain language of Section 3184. Indeed, by distinguishing between "a judge of the United States," who may conduct an extradition proceeding, and "a court of the United States," which may authorize magistrate judges to conduct extradition proceedings, Section 3184 seemingly contemplates that a court may act as a corporate body in appointing magistrate judges to conduct such proceedings.

Nor is there any language in Section 3184 that requires a specific delegation to a magistrate judge in every case. And, as the court of appeals concluded, it

makes little sense to interpret the statute that gives a district court delegation authority to require it to exercise that authority on a case-by-case basis instead of by rule. Finally, nothing in Rule 9 prohibited petitioner from objecting to the delegation of his extradition hearing to a magistrate or requesting that a district judge conduct the hearing. At the least, such a request probably would have resulted in a specific determination by a district judge that petitioner's extradition should be heard by a magistrate judge.[4]

2. Petitioner's principal contention (Pet. 11-18) is that the "automatic[]" delegation of his extradition hearing to a magistrate judge violated Article III of the Constitution. As this Court has explained, however, "Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court." *CFTC* v. *Schor*, 478 U.S. 833, 848 (1986). For example, "the Constitution does not require that all persons charged with federal crimes be tried in Art. III courts." *Swain* v. *Pressley*, 430 U.S. 372, 382-383 (1977); see *Palmore* v. *United States*, 411 U.S. 389, 402 (1973) ("Very early in our history, Congress left the enforcement of selected federal criminal laws to state courts and to state court judges who did not enjoy the protections prescribed for federal judges in Art. III."). Congressional delegation of a judicial function to a non-Article III officer violates Article III only if it intrudes on "the role of the independent judiciary within the constitutional scheme of tripartite government," see

[4] Because Section 3184 plainly supports the district court's general authorization of magistrate judges to conduct extradition proceedings, there is no need to consider petitioner's claim (Pet. 26-27) that the Federal Magistrates Act does not authorize magistrate judges to conduct extradition hearings.

*Thomas* v. *Union Carbide Agric. Products Co.*, 473 U.S. 568, 583 (1985), or violates a litigant's "right to have claims decided by judges who are free from potential domination by other branches of government." *United States* v. *Will*, 449 U.S. 200, 218 (1980); see *CFTC* v. *Schor*, 478 U.S. at 848. Petitioner concedes (Pet. 13 n.24) that assigning a magistrate judge to preside over his extradition hearing did not violate his personal right under Article III to an independent tribunal.

Assigning magistrate judges to preside over extradition hearings also does not intrude on the independence of the judiciary. Instead, the practice is permissible because, like other miscellaneous functions performed by Judicial Branch officers, conducting extradition hearings does not threaten the judiciary's role vis-a-vis the other branches of government. See *Ward* v. *Rutherford*, 921 F.2d 286, 287 (D.C. Cir. 1990) (R.B. Ginsburg, J.), cert. dismissed, 111 S. Ct. 2844 (1991). As this Court long ago held, an extradition proceeding is "of the character of those preliminary examinations which take place every day in this country before an examining or committing magistrate for the purpose of determining whether a case is made out which will justify the holding of the accused." *Benson* v. *McMahon*, 127 U.S. 457, 463 (1888). Conducting preliminary hearings and issuing search warrants are analogous functions that have routinely been assigned by statute, rule, and practice to federal magistrates. These are ancillary functions that the courts are authorized to perform, even though they do not constitute the exercise of the judicial power itself. *Morrison* v. *Olson*, 487 U.S. 654, 681-682 & n.20 (1988). These functions may be assigned to magistrate judges because they do not "lie at the core of the historically recognized judicial power." *Northern Pipeline Constr.*

*Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 70 (1982) (opinion of Brennan, J.).

Like a search warrant, an extradition order simply grants an Executive Branch officer the authority to take action; it does not compel that action, which the Executive Branch officer may decline to take at his or her option. Moreover, because Congress could have committed the task of making a determination of extraditability solely to the Secretary of State, the participation of non-Article III officers in the hearing process does not raise concerns of Executive Branch encroachment on Judicial Branch prerogatives. See *Thomas* v. *Union Carbide Agric. Products Co.*, 473 U.S. at 589. Thus, "an officer who presides over [an extradition] proceeding is not exercising 'any part of the judicial power of the United States.'" *In re Extradition of Howard*, 996 F.2d 1320, 1325 (1st Cir. 1993) (quoting *In re Kaine*, 55 U.S. (14 How.) at 120). See *Martin* v. *Warden, Atlanta Pen.*, 993 F.2d 824, 828 (11th Cir. 1993) ("An extradition proceeding is not an ordinary Article III case or controversy.").

In addition to being consistent with the practice in analogous areas, the assignment of extradition hearings to magistrate judges has a substantial pedigree. Magistrate judges and their predecessors, commissioners, have held international extradition hearings for more than 140 years, and the procedure has never been thought to raise constitutional objections based on Article III. The historical acceptance of that settled practice, without any indication that it has generated inter-branch friction, suggests that the practice does not raise significant separation of powers concerns.

Finally, Article III review of a magistrate judge's extradition determination is available through habeas corpus review of the Secretary of State's final decision to order extradition. If, as petitioner argues, an extradition

hearing implicates the judicial power of the United States, the availability of Article III judicial review of the essential features of the extradition decision on collateral review adequately protects the independence of the judiciary. See *Ward* v. *Rutherford*, 921 F.2d at 288. Indeed, petitioner does not suggest that he was prejudiced by the assignment of his extradition to a magistrate judge. To the contrary, he obtained review through habeas corpus of the evidence admitted at the extradition hearing by the magistrate judge; the magistrate judge's determination that probable cause existed to extradite him to Great Britain; and the magistrate judge's refusal to allow him further discovery.

3. Petitioner contends (Pet. 13-17) that the court of appeals' decision conflicts with this Court's decisions in *Peretz* v. *United States*, 111 S. Ct. 2661 (1991), and *United States* v. *Raddatz*, 447 U.S. 667 (1980).[5] In petitioner's view (Pet. 15), those decisions stand for the proposition that a delegation to a magistrate judge is

[5] Petitioner also contends (Pet. 13-15) that the court of appeals' decision cannot be squared with *Gomez* v. *United States*, 490 U.S. 858 (1989). In *Gomez*, however, the Court held only that 28 U.S.C. 636(b)(3), which allows district courts to assign to magistrates "such additional duties as are not inconsistent with the Constitution and laws of the United States," does not authorize the delegation to magistrate judges of jury selection at felony trials. The Court found that the structure and legislative history of the statute showed that Congress had not intended to allow magistrates to preside over any aspect of a felony criminal trial. Because of the statutory basis for its decision, the Court expressly declined to decide whether Article III permits a magistrate to preside at jury selection. 490 U.S. at 872 n.25. Thus, *Gomez* is a purely statutory decision interpreting Section 636(b)(3). That case is inapposite here, because Congress has specifically provided in 18 U.S.C. 3184 that a magistrate may preside over international extradition proceedings.

consistent with Article III only if an "Article III Court decides whether to assign a matter to the magistrate" and an "Article III Court decides whether to accept or adopt the work performed by the magistrate."

*Peretz* and *Raddatz* do not conflict with the court of appeals' decision. Both *Raddatz* and *Peretz* involved determinations that fell within the "judicial Power of the United States" as that term is used in Article III. Presiding over an extradition hearing is not one of the "'essential attributes' of judicial power," however. See *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. at 81 (opinion of Brennan, J.). Thus, the Article III limitations those cases imposed on the ability of Congress and the Article III courts to delegate judicial functions to magistrate judges are inapplicable here.

Even if *Raddatz* and *Peretz* had a bearing on petitioner's claim, they would not conflict with the court of appeals' decision here. In *Raddatz*, this Court rejected an Article III challenge to a magistrate's authority to hear a suppression motion in a criminal case and to make proposed findings and recommendations to the district court concerning the proper disposition of the motion. The Court held that the delegation of suppression hearings to a magistrate "does not violate Art. III so long as the ultimate decision is made by the district court." 447 U.S. at 683. The court emphasized that "the entire process takes place under the district court's total control and jurisdiction." *Id.* at 681. Justice Blackmun, concurring, stressed that because the magistrate is subject to the control of the Article III court, "the only conceivable danger of a 'threat' to the 'independence' of the magistrate comes from within, rather than without, the judicial department." *Id.* at 685.

Similarly, in *Peretz*, the Court held that allowing a magistrate judge to preside over jury selection at a

felony trial does not violate the "structural protections" of Article III if the defendant consents to the magistrate judge's role. 111 S. Ct. at 2669. The Court reasoned that "[m]agistrates are appointed and subject to removal by Article III judges," *ibid.* (citing 28 U.S.C. 631), and that the decisions "whether to invoke the magistrate's assistance" and "whether to empanel the jury the selection of which a magistrate has supervised" remain "entirely with the district court." *Ibid.* The Court further held that "to the extent 'de novo review is required to satisfy Article III concerns, it need not be exercised unless requested by the parties.'" *Id.* at 2670 (quoting *United States* v. *Peacock*, 761 F.2d 1313, 1318 (9th Cir.) (Kennedy, J.), cert. denied, 474 U.S. 847 (1985)).

Here, as in *Raddatz* and *Peretz*, magistrate judges act under the authority of the district court, and the magistrate judge's decision in the extradition hearing is subject to review by an Article III court in a habeas corpus proceeding. Moreover, because of the nature of proceedings under Section 3184, there is no threat to the independence of the magistrate. Finally, although petitioner complains that his extradition hearing was "automatically" assigned to a magistrate judge, he did not contest that assignment or request that the hearing be conducted by a district judge. Accordingly, he is poorly positioned to argue that he lacked the opportunity to obtain review by an Article III judge. For these reasons, petitioner's Article III claim is without merit.[6]

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[6] Petitioner also contends (Pet. 16) that the court of appeals' decision conflicts with *Ng Fung Ho* v. *White*, 259 U.S. 276 (1922). That case held that a resident of the United States who proffers sufficient evidence of his citizenship may not be deported by executive order alone, but must be accorded a judicial trial on the issue of citizenship. See *Ward* v. *Rutherford*, 921 F.2d at 288 n.4. That decision therefore has little bearing on the question whether a citi-

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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zen can be extradited after a hearing before a neutral and detached decisionmaker. Moreover, because a citizen may not be deported, deportation constitutes a determination that the deportee is not a citizen. Thus, the determination whether a person is subject to deportation implicates a vital liberty interest. By contrast, an international extradition proceeding determines only whether there is sufficient evidence to warrant an individual's surrender for offenses allegedly committed in another country.